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| 10/619,371      | 07/11/2003  | Shelah M. Lerma      | 8291-99926          | 8584             |

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EXAMINER

LAMM, MARINA

ART UNIT PAPER NUMBER

1616

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,371

Applicant(s)

LERMA, SHELAH M.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/11/03</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 19-22 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/23/05.
2. Claims 1-22 are pending in this application filed 7/11/03. Claims 1-18 are being examined at this time.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-8, 11, 12, 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farooqi et al. (US 6,368,639) in view of Korneyev (US 6,576,269) and Deckers et al. (US 2002/0114820).

Farooqi et al. teach herbal skin care formulations comprising, in a cream base, up to 5% of beeswax, up to 30% of olive oil, up to 18% of glycerin, up to 12% of aloe vera, 20-25% of rose water and up to 1% of geranium oil. See col. 2, lines 48-60; col. 4, lines 7-17, 40-58; col. 5, lines 5-15; Examples. The formulations of Farooqi et al. are used for revitalizing skin, keeping skin smooth, supple and soft, protecting the skin from

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environmental pollution, minimizing the effects of sunburn, chapping and dryness, as well as healing skin cracks, lesions, cuts and treating acne. See col. 2, lines 40-47, 61-65; col. 4, lines 64-67; col. 7, lines 42-48. Farooqi et al. does not teach calendula infused olive oil and cassia oil of Claims 1 and 11. However, Korneyev teaches using olive oil infused with calendula and other herbs in topical compositions for promoting skin regeneration and healing of skin lesions such as ulcers, wounds, sun burns, heat burns, chemical burns and lacerations. See Abstract; col. 3, lines 31-33; col. 4, lines 22-29; col. 5, lines 26-36; Examples. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use olive oil infused with calendula. One having ordinary skill in the art would have been motivated to do this to promote skin regeneration and healing of skin lesions as suggested by Korneyev.

Further, Deckers et al. teach using cassia oil in topical compositions as a natural fragrance. See [0098]. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to further modify the skin treatment compositions of Farooqi et al. such that to use cassia oil. One having ordinary skill in the art would have been motivated to do this to obtain the desired scent of the composition. With respect to Claims 4, 5, 14 and 15, while teaching essential oils, Farooqi et al. does not explicitly teach the claimed frankincense oil and myrrh oil. However, Korneyev teaches using frankincense and/or myrrh essential oils "to help promote healing and restorative processes, prevent infection, and inhibit inflammation".

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See col. 4, lines 33-52. The compositions of Korneyev contain from about 0.01 to about 10 wt% of at least one essential oil. See col. 4, lines 33-36; Examples. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use frankincense oil and/or myrrh oil. One having ordinary skill in the art would have been motivated to do this to help promote skin healing and restorative processes, prevent skin infection, and inhibit skin inflammation as suggested by Korneyev. With respect to Claim 8, Farooqi et al. does not explicitly teach the claimed vitamin E. However, Korneyev teaches using 1-15% of an antioxidant such as vitamin E to increase the stability of the composition, to protect other ingredients from oxidation and to provide nutrients to support skin regeneration. See col. 4, lines 53-67; Examples. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use vitamin E. One having ordinary skill in the art would have been motivated to do this to increase the stability of the composition, to protect other ingredients from oxidation and to provide nutrients to support skin regeneration as suggested by Korneyev. Finally, the determination of optimal or workable concentrations of the ingredients within the references' generic disclosure by routine experimentation is obvious absent showing of criticality of the claimed concentrations. One having ordinary skill in the art would have been motivated to do this to obtain the desired skin healing/moisturizing/softening properties of the composition.

5. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farooqi et al. (US 6,368,639) in view of Korneyev (US 6,576,269) and Deckers et al. (US 2002/0114820) as applied to claims 1 and 11 above, and further in view of Spiers et al. (US 5,916,573).

Farooqi et al. in view of Korneyev and Deckers et al. teach the claimed combination of a water mixture, calendula infused olive oil, cassia oil, geranium oil and wax as discussed above. Farooqi et al. does not teach the claimed grapeseed oil. However, Spiers et al. teach topical skin treatment compositions containing 1-99% by weight of grapeseed oil for its beneficial antioxidant properties. See Abstract; col. 1, lines 27-67. The compositions of Spiers et al. contain grapeseed oil in combination with glycerin, aloe vera, vitamin E and essential oils, such as geranium oil. See col. 2, lines 6-30. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use grapeseed oil. One having ordinary skill in the art would have been motivated to do this to obtain beneficial antioxidant properties as suggested by Spiers et al.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farooqi et al. (US 6,368,639) in view of Korneyev (US 6,576,269) and Deckers et al. (US 2002/0114820) as applied to claim 1 above, and further in view of either Chevalier (US 6,906,106) or Züllli et al. (US 6,986,903).

Farooqi et al. in view of Korneyev and Deckers et al. teach the claimed combination of a water mixture, calendula infused olive oil, cassia oil, geranium oil and wax as discussed above. Neither reference teaches the claimed co-enzyme Q10 (ubiquinone). However, Chevalier teaches using co-enzyme Q10 in skin care compositions "to treat or prevent dryness of the skin, couperose, chronological aging, the rough appearance of the skin, and to treat fine lines and wrinkles and/or skin blemishes" as well as "to prevent regreasing of the skin and/or hair after washing, to provide nutrients to the skin and to prevent it from drying out, to treat acne, and to treat wounds." See Abstract; col. 1, lines 42-50; col. 12, lines 38-67. Züllli et al. teach using co-enzyme Q10 in skin treatment compositions "for improving skin regeneration". See Abstract. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use co-enzyme Q10. One having ordinary skill in the art would have been motivated to do this to obtain additional beneficial cosmetic and/or wound healing and skin regenerating properties as suggested by either Chevalier or Züllli et al.

7. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farooqi et al. (US 6,368,639) in view of Korneyev (US 6,576,269) and Deckers et al. (US 2002/0114820) as applied to claims 1 and 11 above, and further in view of Denda et al. (US 6,315,980).

Farooqi et al. in view of Korneyev and Deckers et al. teach the claimed combination of a water mixture, calendula infused olive oil, cassia oil, geranium oil and wax as discussed above. Neither reference teaches the claimed violet fragrance. However, Denda et al. teach topical compositions containing at least 0.01% of a fragrance composition, including sweet violet fragrance, to recover and promote skin barrier function. See col. 1, lines 50-56; col. 4, lines 3-8, 63-67. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the skin treatment compositions of Farooqi et al. such that to use violet fragrance. One having ordinary skill in the art would have been motivated to do this to obtain skin barrier function recovery and promotion as suggested by Denda et al.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,593,038; US 5,997,876; US 6,197,305; US 2003/0232094; US 2004/0031500; SU 1683750 A1.

9. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

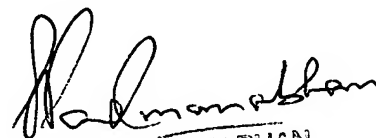


If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm  
3/14/06

  
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